

United States Government

Department of Energy

# memorandum

DATE: FEB 23 1990

REPLY TO

ATTN OF: EH-231

SUBJECT: Management of Cultural Resources at Department of Energy Facilities

TO: DISTRIBUTION

## Purpose and Scope

The purpose of this memorandum is to inform all Department of Energy (DOE) facilities and programs of the requirements for complying with the various executive orders, statutes and implementing regulations governing the management of cultural resources. These statutes and executive orders are in addition to the general provisions contained in the National Environmental Policy Act (PL 91-190) and the Council on Environmental Quality implementing regulations (40 CFR 1500) and include: Executive Order 11593, the Antiquities Act of 1906 (PL 59-209); the Historic Sites Act of 1935 (PL 74-292); the National Historic Preservation Act of 1966 (PL 89-665); the Archaeological and Historic Preservation Act of 1974 (PL 93-291); the Archaeological Resources Protection Act of 1979 (PL 96-95); the American Indian Religious Freedom Act of 1978 (PL 95-341); the American Folklife Preservation Act of 1976 (PL 94-201) and the Abandoned Shipwreck Act 1987.

Cultural resources include, but are not limited to, the following broad range of items and locations: (1) archaeological materials (artifacts) and sites dating to the Prehistoric, Historic and Ethnohistoric Periods that are currently located on the ground surface or are buried beneath it, (2) standing structures that are over 50 years of age or are important because they represent a major historical theme or era, (3) cultural and natural places, select natural resources and sacred objects that have importance for American Indians, and (4) American folklife traditions and arts.

Existing cultural resource management laws and their implementing regulations require operators of DOE-owned or leased facilities to develop programs for the identification, evaluation, protection and mitigation of cultural resources located on the properties under their management. DOE programs which provide permits and/or allocate funding that may affect cultural resources on non-DOE owned land are also required to comply with cultural resource management laws and regulations.

DOE facility and program managers must consult with their respective State Historic Preservation Officers (SHPOs) concerning specific compliance requirements and cultural resource preservation planning. Consultation with the Advisory Council on Historic Preservation (ACHP) may also be required in some cases and should be extended to include appropriate local historical organizations, interested individuals and groups, and American Indian Tribes. Consultation is required under the National Historic Preservation Act.

Failure to protect both known and unrecorded cultural resource sites and materials can lead to criminal and civil penalties, including up to 5 years imprisonment and up to \$250,000 per violation, as well as the forfeiture of all equipment and vehicles used to facilitate a violation (see the Archaeological Resources Protection Act and the Omnibus Crime Control Act of 1984 [PL 98-596]).

### Implications for DOE Facilities

The Department recognizes the cultural and scientific value of the cultural resources that may exist on the properties under its management. This includes DOE day-to-day operations, new construction and RCRA and CERCLA related remedial action activities that may impact cultural resources. Managers are required to establish government-to-government relationship with American Indian Tribes that may be impacted by their activities. (Federal Indian Policy Statement, January 24, 1983) A consolidated management plan that is responsive to the letter and spirit of existing cultural resource compliance legislation and implementing regulations must be developed for and implemented at each DOE facility.

Cultural resource management plans must include the following elements:

- (1) Employ professionally trained cultural resource management personnel to prepare resource management plans and compliance reports, determine the need for and scope of field studies, and evaluate the potential National Register significance of identified cultural resources (for guidance in selecting qualified personnel see 36 CFR Part 61 and the 1983 Department of Interior Guidelines concerning Professional Qualifications Standards).
- (2) Incorporate consulting parties (the agency official, State Historic Preservation Officer and Advisory Council) and interested persons that include local governments; applicants for Federal assistance, permits, licenses; Indian Tribes and the public into the 106 (consultation) process as specified in the National Historic Preservation Act and its implementing regulations (36 CFR Part 800) and the Archaeological Resources Protection Act.
- (3) Identify and interact with American Indian Tribes that have traditional and/or treaty ties to DOE owned/operated properties and to non-DOE properties that may be impacted by DOE project funding. These activities should include the identification of places, natural resources and objects of sacred and religious importance that are defined by designated tribal representatives (American Indian Religious Freedom Act; also see the recommendations provided in the American Indian Religious Freedom Report of 1979).
- (4) Monitor and protect known cultural resource sites and areas that contain potential unreported sites. These actions should include enforcement of the provisions specified under the Archaeological Resources Protection Act.

(5) Develop a systematic program to inventory surface and sub-surface cultural resource sites at each DOE facility (Section 110 of the National Historic Preservation Act; Executive Order 11593). Inventories should include buildings that may be less than 50 years of age that have significant historical importance.

(6) Utilize the National Register of Historic Places criteria in 36 CFR Part 60 to evaluate the significance of the cultural resources that have been identified.

(7) Establish a permitting system for the controlled excavation, removal and protection of cultural resources via scientific and compliance-oriented field projects (Archaeological Resources Protection Act).

(8) Include sufficient lead time in the project planning process for meeting cultural resource compliance requirements for field surveys and excavations (Section 106 of the National Historic Preservation Act). The time necessary to complete field activities and the preparation of compliance documents that meet federal standards must be factored into the front-end scheduling of projects that involve ground disturbing activities or modifications to standing structures that are 50 years in age or older.

(9) Budget sufficient funds to support cultural resource compliance actions and programs (see the Archaeological and Historic Preservation Act and the National Historic Preservation Act Amendments).

(10) Curate cultural resource collections and records in accordance with the guidance provided in 36 CFR Part 79. The public distribution of compliance related studies and reports should comply with the National Historic Preservation Act.

(11) Protect information concerning the exact location of cultural resource sites that are sensitive and prohibit the dissemination of information to the general public in order to prevent looting and vandalism.

#### Implications for DOE Programs

DOE program managers must follow the planning considerations discussed above whenever licensing and/or funding result in ground disturbing activities and/or alterations to standing structures that are 50 years of age or older or are important because they represent a major historical theme or era. Program managers must ensure that compliance is maintained for projects that are located on DOE owned as well as non-DOE owned properties.

#### SUMMARY

DOE facilities and programs are required to comply with all existing cultural resource executive orders, laws and regulations. The most conspicuous impacts to facilities and programs include:

- (1) increased expenditures to support compliance-driven activities;
- (2) consultation with federal, state, and local preservation groups and American Indian Tribes to facilitate public involvement and participation;
- (3) expand front-end planning and scheduling for projects that involve ground disturbing activities and modifications to structures that are 50 years of age or older or are important because they represent a major historical theme or era in order to provide adequate time for conducting compliance surveys, preparing compliance reports and consultation with SHPOs, American Indian tribes and other interested parties; and
- (4) development and implementation of site monitoring/protection plans and the systematic curation of artifactual materials and records.

The text of the selected laws and regulations mentioned in this guidance memorandum can be found in the Historic Preservation Requirements Reference Book. The Reference Book presents a summary of the regulatory program, a brief history of the statute, an annotated copy of the implementing regulations of most significance for DOE and information regarding proposed regulations. The Historic Preservation Requirement Reference Book will be updated to reflect information contained in this guidance memorandum.

You are strongly encouraged to contact and interact with the Advisory Council on Historic Preservation, the State Historic Preservation Officer in your state, local historical organizations and American Indian Tribes for further information concerning the importance of cultural resources that may exist on your facilities or on properties that may be impacted by your programs.

The Environmental Guidance Division will provide your office with additional information on meeting compliance procedures. In addition, a two-day workshop on cultural resources is being developed to provide you with further information on developing a cultural resource management plan. This workshop is tentatively scheduled for July 1990 in Santa Fe, NM. Further information will be provided by this office regarding this workshop and on the availability of training courses sponsored by the DOE, the Advisory Council on Historic Preservation, the Department of the Interior and other agencies. If there are any questions, please contact Lois Thompson, Air, Water and Radiation Protection Unit, FTS 896-9581.



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